

hee makes, And itt appeares here by the Record in Court that the Lib^r W. C. sheriffe did return a Cepi upon the said writt

(2) As to the second M^r John Hamiltons affirmation not being upon oath The said Perfitt saith that there was no need of any oath being made by the said Hamilton untill the Allegacon of the said Hamilton had beene denied by the sd Vanswearen w^{ch} said Allegation ought to bee taken for Truth, if not denied by the adverse pty, and the said Perfitt further Saith that the Tender made by him the said Perfitt to the said Vanswearin was Effectuall in Lawe to barr the said Accon the Truth of w^{ch} Allegation of the said Tend^r being unquestionable in regard the said Hamilton was Vanswearingens Receiver, and as his Receiver stood in place of the said Vanswearingen And Whereas alleadged by Hamilton hee being Vanswearingens Receiver Amounts to Vanswearingens owne Confession and soe the Court ought to have given Judgment against the plantiffe with Costs, The Tender soe Confessed being made before the Comencing of the said Accōn, And therefore a good barr in Lawe

(3) As to the third That the Tobacco to be paid by the Obligation aforesaid aforesaid was to be in Caske, The said Perfitt sayth p. 175 that hee did Tender the said Two hundred twenty five pounds of Tobacco in Caske, and to the said Vanswearingens Receiver Hamilton w^{ch} being matter of ffact hee the said Perfitt is Ready to prove when denied by the sd Vanswearingen as this Court shall order, all w^{ch} matters appeareing to the Court of Charles County, And that the said Perfitt was soe sick that hee was not able to bee at Court The truth w^{ch} was well Knowne to most of the Court there, The said Court had good Cause to Dismiss the said Accon as they did, Whereupon the said perfect Craves That the Judgment Given as aforesaid may bee Affirmed with Allowance of his Costs and charges in this Case sustained

And hereupon the Record and Processe aforesaid to the Rendring the Judgment thereupon, and the aforesaid Causes and matters by the aforesaid p^t for Errors Assigned being seene and by the Justices here fully understood & dilligently Examined, And for that Itt appeareth to the same Justices That in the Record and processe aforesaid as also in the Rendring the Judgment aforesaid Itt is manifestly Erronious, Therefore Itt is Considered that the Judgment Aforesaid for the Erro^{rs} in the Record and processe aforesaid. Bee Revoaked, Adnulled, and altogether held for nothing, and That the said Garret Vanswearingen unto all things w^{ch} by occasion of the Judgment aforesaid hee hath Lost bee Restored, And that the said Garret Vanswearingen Recover against the said William Perfitt the sume of Sixteen hundred and seaven pounds of Tobacco for his Costs of suite in this behalf Expended